

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

MICHAEL D. LUNDY, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 02-0189-CV-W-FJG
	)	
GUY M. HILDER, et al.,	)	
	)	
Defendants.	)	

**ORDER**

Before the Court are (1) the parties' Joint Proposal for Monitoring Mechanism (Doc. No. 278); (2) plaintiffs' Report to the Court on Discovery Needs (Doc. No. 261); and (3) plaintiffs' Motion for Sanctions against Guy Hilder and Susan Hilder for Failure to Appear for Depositions and Supporting Suggestions (Doc. No. 271).

With respect to the parties' Joint Proposal for Monitoring Mechanism (Doc. No. 278), the Court **APPROVES** of the proposal as a starting point for monitoring performance under the Court's Orders. Furthermore, the Court will be appointing a special master to resolve any disputes between the parties that may arise, and the parties shall share in the expenses incurred by the special master. The Court anticipates appointing the special master when the first dispute is submitted to the Court.

As for plaintiffs' Report to the Court on Discovery Needs (Doc. No. 261), the Court finds that the plaintiffs' request of a thirty-day period for all remaining discovery is unrealistic given the history of this case. Discovery on remaining accounting/disgorgement relief issues shall close on **June 1, 2006**.

Finally, the Court has reviewed plaintiffs' Motion for Sanctions against Guy Hilder and Susan Hilder for Failure to Appear for Depositions (Doc. No. 271), as well as

defendants' response (Doc. No. 277). Plaintiffs served notices of deposition as to Guy Hilder and Susan Hilder on February 23, 2006, for depositions to be held in Kansas City, Missouri on March 2, 2006. Plaintiffs state that "the Hilders feign inconvenience of schedules for not appearing or otherwise not arranging their depositions, but as during the earlier four years of this litigation, the Hilders just cannot bring themselves to appear for depositions."<sup>1</sup> Plaintiffs suggest a sanction of (1) if defendants do not appear for a deposition in Kansas City within 10 days, the Court should find that disgorgement relief against Susan Hilder and Guy Hilder should be \$1.6 million for 2002, \$1.7 million for 2003, \$1.7 million for 2004, \$1.7 million for 2005, and \$140,000 for each month of 2006 before judgment is entered; and (2) attorneys' fees and expenses for the deposition and court reporter.

A review of the plaintiffs' motion and defendants' response shows that defendants' counsel sent a letter to plaintiffs' counsel on February 28, 2006, noting that defendants' counsel was unable to attend the date that plaintiffs' counsel unilaterally scheduled the deposition. Defendants' counsel further notes in defendants' response that counsel had a previously scheduled trip to Colorado for the afternoon of the date of the depositions. Defendants' counsel states, "If Mr. Franklin had called me to discuss this, as virtually every other lawyer I know would have done, we could have avoided this waste of the Court's time." Defendants' counsel further notes that he "even asked in [his] letter [to plaintiffs' counsel] that if he planned to convene depositions to please let [him] know so that [he] could seek a protective order."

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<sup>1</sup>Although plaintiffs suggest that the Hilders had refused to appear for depositions in the previous years of litigation, the docket entries on ECF are completely devoid of any notices of deposition served on defendants Guy and Susan Hilder prior to February 2006.

In this Court's opinion, the charges incurred by plaintiffs' counsel in convening a deposition that he knew would not be attended by the Hilders were completely avoidable. The Court **DENIES** plaintiffs' motion for sanctions (Doc. No. 271) in its entirety.

**IT IS SO ORDERED.**

Dated: \_\_April 7, 2006\_  
Kansas City, Missouri

/s/ Fernando J. Gaitan, Jr.  
Fernando J. Gaitan, Jr.  
United States District Judge